TCG

EX PARTE OR LATE FILED

Robert C. Atkinson
Senior Vice President
Regulatory & External Affairs

Teleport Communications Group
One Teleport Drive
Staten Island, NY 10311
Tel: 718.983.2160
Fax: 718.983.2795

DOCKET FILE COPY ORIGINAL

RECEIVED

JUL 25 1996

July 25, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Interconnection NPRM -
CC Docket No. 96-98

Dear Mr. Caton:

Teleport Communications Group Inc. ("TCG") hereby gives notice of an ex parte presentation in the above-referenced proceeding. On July 25, 1996, Robert C. Atkinson of TCG sent the attached letter and attachments to Regina Keeney, Chief of the Common Carrier Bureau.

Very truly yours,

Robert C. Atkinson

Robert C. Atkinson

Attachment
cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
John Nakahata
Joseph Farrell
Richard K. Welch
James L. Casserly
Daniel Gonzales
James Schlichting
James Coltharp
Robert Pepper
Donald Stockdale
Matthew Warren
Regina Keeney

No. of Copies rec'd 0+1
List ABCDE

TCG

Robert C. Atkinson
Senior Vice President
Regulatory & External Affairs

Teleport Communications Group
One Teleport Drive
Staten Island, NY 10311
Tel: 718.983.2160
Fax: 718.983.2795

RECEIVED
JUL 25 1996

July 25, 1996

Ms. Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 500
Washington, D.C. 20554

Re: CC Docket No. 96-98 - Interconnection Requirements

Dear Ms. Keeney:

Over the past few days, representatives of Teleport Communications Group (TCG) have had meetings with the Commissioners' offices and the Common Carrier Bureau concerning the above-referenced docket. The purpose of those meetings was to share TCG's experiences in its negotiations with the incumbent LECs. The negotiations process has made clear to TCG that there remain three critical areas of disagreement -- (1) reciprocal arrangements for Transport and Termination of local traffic; (2) meet point billing arrangements for tandem switched access traffic; and (3) performance standards and penalties. TCG addressed each of these issues, but primarily focused its discussions with the Bureau, Commissioners and their staff on the Transport and Termination issue. I will address only the Transport and Termination issue in this ex parte letter because it is the issue which will most affect the development of facilities-based local exchange service competition.

As the Act states in Section 252(d)(2), the pricing for transport and termination must be a reasonable approximation of the additional cost caused by *each* interconnector. This language clearly recognizes that each carrier is likely to impose varying transport and termination costs on the terminating carrier, depending on the originating carrier's business objectives, market focus, technological capabilities, and such factors as whether most of the traffic is "peak" or "off-peak" or whether the interconnection takes place at the tandem or end office. Indeed, many interconnecting carriers will impose no measurable additional costs on the terminating carrier for at least some period of time after the first exchange of traffic.

A Commission policy that sets a uniform forward looking "guesstimate" of a one-size-fits-all transport and termination rate cannot satisfy the requirements of the Act because it will not be a reasonable approximation of the additional costs imposed by most carriers in most markets most of the time.

Perhaps most significantly, if the Commission establishes a minutes-of-use (MOU) price for transport and termination (which is more than infinitesimal), it will be arbitrarily picking winners and losers among customers and disincenting competitive local exchange carriers from servicing certain market segments, particularly customers with even moderate levels of outbound traffic.[1] Since many states prohibit mandatory usage-sensitive rates for local calls (requiring instead a flat-rate option), in such states, an MOU transport and termination charge would place competitors in an intolerable price squeeze -- offering a flat-rate retail price, but paying for transport and termination under an MOU structure. Such a situation may require the FCC to preempt State laws and regulations that require flat-rate local service because mandatory flat-rate retail pricing is likely to have the effect of being a barrier to entry if interconnection rates are imposed on a usage-sensitive basis. In addition to eliminating flat-rate local calling, which is very popular with many consumers, the Commission would be imposing usage-sensitive pricing on information services and Internet services. Needless to say, this would be extremely controversial.

---

1. Indeed, assuming a $0.005 per minute transport and termination charge, it would be uneconomical for competitive LECs to offer most residential customers its services in five US West states. In Washington state, for example, *any customer with usage greater than 2.66 minutes a day would be uneconomical to serve* and would not have competitive alternatives available to them. Thus, competitive LECs could not economically serve a residential customer in Washington who made *more than one call per day*. This problem also will exist in Arizona, Colorado, Oregon, and Utah.

Similarly, Ameritech offers in Chicago both time-of-day discounts (10%-40%) and volume discounts (i.e., 5% for residential consumers spending more than $10.00 per month, and 50% for business customers spending more than $832.00 per month). If Transport and Termination rates were 0.5 cents per minute at the end office and 0.75 cents per minute at the tandem, a CLEC would lose money matching Ameritech's rate of 5.2 cents per call on most residential calls, particularly for long (i.e., Internet) and night/weekend calls.

In sum, a uniform, one-size-fits-all MOU transport and termination charge ignores the fact that different carriers will impose different costs (or no costs at all) on terminating carriers; places competitors in a price squeeze, particularly in states that require a flat-rate retail option for local calls; and limits states' ability to incorporate their public policies in determining retail pricing structures. In our view, the Commission should apply Section 252(d)(2) of the Telecommunications Act literally and as Congress intended, so that a terminating carrier would have to demonstrate that it has incurred additional costs for transport and termination before it could apply Transport and Termination charges to handle that carrier's traffic.

Sincerely,

Robert C. Atkinson

Robert C. Atkinson
Senior Vice President
Legal, Regulatory and
External Affairs

Enclosure

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
John Nakahata
Joseph Farrell
Richard K. Welch
James L. Casserly
Daniel Gonzales
James Schlichting
James Coltharp
Robert Pepper
Donald Stockdale
Matthew Warren

TCG'S INTERCONNECTION NEGOTIATIONS

- **160 DAY NEGOTIATING PERIOD WITH RBOCS ENDED JULY 17**

  TCG reached agreements covering 10 States:

  - **Pacific Bell (CA.)**
  - **BellSouth (AL, FL, GA, KY, LA, MS, NC, SC, TN)**

  TCG filed Arbitration Petitions in 21 States:

  - **NYNEX (NY, MA, RI)**
  - **Bell Atlantic (NJ, PA, MD, VA, DC)**
  - **Ameritech (IL, WI, MI, OH, IN)**
  - **Southwestern Bell (TX, MO)**
  - **US West (AZ, CO, NE, UT, OR, WA)**

- **PRINCIPAL AREAS OF DISAGREEMENT REQUIRING ARBITRATION**

  - **Reciprocal Arrangement for Transport & Termination of Local Traffic**
  - **Meet Point Billing Arrangement for Tandem Switched Access Traffic**
  - **Performance Standards (and Penalties)**

RECIPROCAL COMPENSATION FOR TRANSPORT & TERMINATION OF LOCAL EXCHANGE TRAFFIC

- Sec. 252(d)(2)(A)(i): Transport & Termination (T&T) arrangements must provide for "...recovery by each carrier of costs associated with the transport and termination on each *carrier's network facilities of calls that originate on the network facilities of the other carrier*"

    - Since each CLEC will have different business objectives, market focus, technological capabilities, etc., each will impose DIFFERENT costs on the ILEC's network facilities

        - *Example*: Since "off peak" CLEC traffic will impose lower costs on ILECs than "peak" traffic, a "residential" CLEC will impose less costs than a "business" CLEC.

        - *Example*: Interconnecting at ILEC end office will impose less costs than interconnecting at ILEC tandem.

    - Therefore, each CLEC is entitled to a unique T&T arrangement that reflects ONLY the costs it causes

- Sec. 252(d)(2)(A)(ii): costs are to be determined "on the basis of a reasonable approximation of the *additional* costs of terminating such calls."

    - At "start up", each CLEC's traffic volume will be so *minuscule that it will impose* NO measurable additional costs on ILEC.

    - As each CLEC's traffic increases AND if the ILEC is able to identify the *additional* costs caused by the CLEC, the ILEC should recover those costs, but only those costs.

TRANSPORT & TERMINATION RATES

- Sec. 252(d)(2) pricing standard is "reasonable approximation of additional cost" caused by each interconnector
- Other major goals:
  - Consistency with "flat rate" residential local calling favored/required by many States' laws or policies
  - Encouraging facilities-based local exchange competition
  - Equalizing bargaining power of CLEC vs. ILEC
- BUT ... each interconnector will cause different costs (and some may cause none), depending on such factors as:
  - Time of day peak (residential / business mix)
  - Holding times (voice / data / internet mix)
  - Transport requirement (tandem / end-office mix)
  - Stimulated volume vs. substitute volume
  - Total volume
- AND ... most (if not all) additional costs will be capacity costs, not usage-sensitive costs
- THEREFORE ... "One size can't fit all" (or satisfy Act, goals)
- EXCEPT ... "Bill and Keep until the terminating carrier demonstrates actual additional costs caused by interconnector"
- THEN ... Recover end-office capacity costs via capacity charges and recover tandem and usage-sensitive costs via minute-of-use (MOU) charges
  - VERY low end-office MOU charges *might* be acceptable "second best"

MEET POINT BILLING ARRANGEMENT FOR TANDEM SWITCHED ACCESS TRAFFIC

- Sec. 251(c)(2)(A) and (D) require ILECs to interconnect "for the transmission and routing of ... exchange access ... on rates, terms, and conditions that are just, reasonable, and nondiscriminatory..."

- Competitive tandem-routed access service will be jointly provided by CLEC and ILEC

  - Generally, the CLEC will provide "tandem" and "transport" and the ILEC will provide "end office" functions

  - But most ILECs refuse to divide the switched access revenue in a manner that fairly reflects the functions provided by each carrier: it is neither "just" nor "reasonable" for the ILEC to charge TCG for services the ILEC does not provide.

- Competition for tandem switched access service will "reform" switched access rates in much the same way that competition "reformed" special access rates.

- Competition for tandem switched access will encourage the development of facilities-based competition.

PERFORMANCE STANDARDS (AND PENALTIES)

- Sec. 251(c)(2)(C): ILECs have a DUTY to provide CLEC's facilities and equipment with interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate or any other party to which the carrier provides interconnection:"

  - The ILEC's performance standard for CLECs is NOT the ILEC's level of performance for end-user retail customers, it is the ILEC's "internal" standards.

  - To provide end-user retail customers with a given performance level, each element of the ILEC's service must perform at a HIGHER level.

  - CLECs are entitled to the better of the ILEC's "internal" performance or performance for any other interconnector.

- To be make Sec. 251(c)(2)(C) a meaningful duty (and de-regulatory):

  - each ILEC MUST "publish" and periodically update its own "internal" performance standards as well as actual performance for each interconnector.

  - there must be a rapid, low cost enforcement mechanism (i.e., pre-determined financial penalties)

SAMPLING OF STATE STATUTORY PROHIBITIONS AGAINST MANDATORY MINUTES OF USE RATE STRUCTURE FOR LOCAL CALLS

COLORADO	C.R.S. §40-15-206(3) forbids carriers from requiring end users to pay for local services under a measured or message rate structure. Measured or message rate services can be offered only as an option. Thus, flat rate services also must be available.
INDIANA	Ban against offering an MOU rate structure for local calling. Carriers must offer a flat rate or "metered pricing" structure (i.e. pricing based upon a set number of calls per month at a fixed rate). This ban will be in place until at least January 1, 1998, (pursuant to a settlement agreement (Cause No. 39705)). Based on the state's tradition of flat/metered pricing, the Jan. 1998 lift of the MOU ban may well be accompanied by a requirement that flat/metered pricing must be made available as an option to the end user.
NEBRASKA	Neb. Rev. Stat. 86-803(8) provides that the Commission may order that flat rate services shall be available whenever measured service is implemented. Based on this statute, the Commission required US West to also offer an *optional flat rate service* in addition to the measured service component.
OREGON	Chap. 759.235 prohibits the Commission from requiring any telephone customer to pay for local exchange telephone service on a mandatory measured service basis.
WASHINGTON	CRW 80.04.130(3) prohibits the Commission from accepting for filing or approving any tariff for local services which imposes *mandatory* local measured service on *any* customer (business or residential). [For EAS and FX service, the Commission may approve upon a public interest finding]. This issue will be revisited June 1, 1998; however the statute expressly states that *"The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service."*

R